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INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that have emanated from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1).

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I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 45: CISG 38(1); 39(1); 40

International Chamber of Commerce, International Court of Arbitration

Arbitral award issued in 1989 in case no. 5713

Excerpts published in Yearbook Commercial Arbitration, Vol. XV - 1990, 70

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

(Abstract prepared by Picard of the ICC International Court of Arbitration)

In a series of contracts for the sale of goods on f.o.b. terms, the buyer disputed, both prior to shipment and upon arrival, the conformity of goods covered under one of the contracts with certain contract specifications. The buyer treated the goods in order to make them more saleable and sold them at a loss. The seller demanded full payment and the buyer filed a counterclaim demanding compensation for direct losses, financing costs, lost profits and interest.

The arbitral tribunal held, pursuant to article 13 (3) of the 1975 ICC arbitration rules, which allows the tribunal in the absence of a choice of law by the parties to determine the applicable law by applying the private international law rule that it deems appropriate, that the contract was governed by the law of the country where the seller had his place of business. In addition, pursuant to article 13(5) of the ICC arbitration rules, the tribunal decided to take into account CISG as a source of prevailing trade usages. As the applicable provisions of the law of the country where the seller had his place of business appeared to deviate from the generally accepted trade usages reflected in CISG in that it imposed extremely short and specific time requirements in respect of the buyer giving notice to the seller in case of defects, the tribunal applied CISG.

The tribunal found that the buyer had complied with the requirements of CISG to examine the goods properly (art. 38(1) CISG) and to notify the seller accordingly (art. 39(1) CISG). It was held that, according to article 40 CISG, at any rate the seller would not be entitled to rely on non-compliance by the buyer with articles 38 and 39 of CISG for the reason that the seller knew or could not have been unaware of the non-conformity of the goods with contract specifications. The tribunal awarded the seller the full amount of its claim and set it off against part of the buyer's counterclaim.

Case 46: CISG 1(1); 50; 53; 59

Germany: Landgericht Aachen; 41 O 198/89

3 April 1989

Excerpts published in German: Recht der Internationalen Wirtschaft (RIW) 1990, 491

Referred to by Piltz in Neue Juristische Wochenschrift (NJW) 1994, 1101

The seller, an Italian shoe manufacturer, claimed the balance of amounts due from a contract concluded in 1989. The German buyer counterclaimed a price reduction for non-conformity of the goods with contract specifications.

The court found that the law of Italy was applicable under German private international law as the law of the country where the seller had its place of business, and applied CISG as part of

Italian law in force at the time of the conclusion of the contract. It was held that the buyer could reduce the price of the goods in the same proportion as the value that the goods actually delivered had at the time of delivery bore to the value that conforming goods would have had at that time (art. 50 CISG).

Case 47: CISG 31 (b); 61 (1)(b); 63; 74-77

Germany: Landgericht Aachen; 43 O 136/92

14 May 1993

Excerpts published in German: Recht der Internationalen Wirtschaft (RIW) 1993, 760

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

Referred to by Piltz in Neue Juristische Wochenschrift (NJW) 1994, 1101

The German seller of ten electronic ear devices demanded damages for breach of contract by the Italian buyer, who had failed to take delivery despite the additional period of time set by the seller for the buyer to take delivery.

The court held that it had jurisdiction under article 5(1) of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters, which provides that a party who is domiciled in a Contracting State can be sued before the courts of the place where the obligation giving rise to the dispute had to be performed. The court applied article 31 (b) CISG, which was applicable under German private international law as part of German law, and determined that Aachen, where the goods had been manufactured, was the place where the seller was obliged to deliver (art. 31(b) CISG).

The court applied articles 61 (1)(b), 63 and 74-77 CISG and found that the buyer had to pay damages to the seller for failing to take delivery of the goods, even after the additional period of time set by the seller had expired.

Case 48: CISG 1(1)(b); 5(1) and (2); 38(1); 39; 45; 50; 51

Germany: Oberlandesgericht Düsseldorf; 17 U 82/93

8 January 1993

Excerpts published in German: Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1993, 412

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

Commented on by Magnus in Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1993, 390 and in Zeitschrift für Europäisches Privatrecht (ZEuP) 1993, 79

The German buyer of fresh cucumbers appealed against the decision of the court of first instance, which ordered the German buyer to pay to the Turkish seller the balance of the price due under the contract. The court of first instance had dismissed the application of the buyer for a reduction of the price of the goods for non-conformity with contract specifications on the ground that the buyer had inspected the goods at the place of delivery in Turkey and had found them to be in good order.

The appellate court found that the parties, during the oral hearings before the court of first instance, had agreed to submit their dispute to German law and held that CISG was applicable as

part of German law. The judgement of the court of first instance was upheld on the ground that the buyer lost the right to rely on non-conformity of goods and to reduce the price proportionally, since it gave notice of the non-conformity only when the goods arrived in Germany, i.e. seven days after the buyer had the opportunity to examine them at the place of delivery in Turkey (art. 38, 39(1) and 50 CISG).

Case 49: CISG 7(2); 45; 57(1)(a); 74

Germany: Oberlandesgericht Düsseldorf; 17 U 73/93

2 July 1993

Excerpts published in German: Recht der Internationalen Wirtschaft (RIW) 1993, 845

The plaintiff, a German buyer of a knifecutting machine, demanded damages for personal injury caused by, and repair costs of, the machine, which the plaintiff had bought from the defendant, a manufacturer situated in Indiana, U.S.A., and installed in a Russian furniture factory. The court of first instance found in an interim judgement that it had jurisdiction. The defendant appealed.

The appellate court dismissed the appeal and found that the court of first instance had jurisdiction under the provisions of the German code of civil procedure granting jurisdiction to the court of the place where the disputed obligation, in the present case the obligation to payment of damages, was to be performed. In order to determine the place where damages were payable, the appellate court applied CISG as part of the law of Indiana, which was applicable under German private international law. The appellate court held that article 57(1)(a) CISG, providing that the purchase price is payable at the place of business of the seller, indicated a general principle that claims for payment of money, including damages for breach of contract arising under articles 45 and 74 CISG, were payable at the place of business of the claimant, who in the present case was the German buyer.

Case 50: CISG 35(2)(a); 45; 49(1); 51(1); 74

Germany: Landgericht Baden-Baden; 4 O 113/90

14 August 1991

Excerpts published in German: Recht der Internationalen Wirtschaft (RIW) 1992, 62

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

The plaintiff, an Italian tile manufacturer, demanded payment of the balance due under a contract with the defendant, a German company. The defendant counterclaimed damages on the ground that the goods initially ordered, as well as the replacement sent, were non-conforming with contract specifications. Under the contract, objections concerning non-conformity could not be submitted later than thirty days after delivery.

The court, applying CISG as part of Italian law applicable under German private international law, found that the plaintiff failed to deliver goods fit for the purpose for which goods of the same description would ordinarily be used and, as a result, the defendant was entitled to declare the contract partially avoided and to reduce the price (art. 35(2), 45, 49(1) and 51(1) CISG). While such a partial avoidance did not affect the defendant's right to claim damages (art. 45(1)(b) CISG), it was held that the defendant had lost the right to claim damages since it

failed to notify the plaintiff about the non-conformity of goods within the thirty-day-period after delivery set in the contract.

Case 51: CISG 45(1)(b); 73(1); 74

Germany: Amtsgericht Frankfurt 32 C 1074/90-41

31 January 1991

Excerpts published in German with comments by Jayme: Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1991, 345

The plaintiff, an Italian manufacturer of shoes, demanded payment of the balance due under the contract with defendant, a German company. The contract provided for payment of 40% of the purchase price upon delivery and the balance within sixty days after delivery. The seller sent an invoice in September 1989 and shipped the goods in January 1989 but suspended delivery without notifying the buyer, who was forced to pay more than 40% of the purchase price upon delivery in order to obtain the goods.

The court held that the seller committed a breach of contract by suspending delivery without giving notice of the suspension to the buyer and set off the claim of the seller for the balance of the purchase price against the claim of the buyer for damages (art. 45(1)(b), 73(1) and 74 CISG).

Case 52: CISG 9(1); 53

Hungary: Municipal Court Budapest AZ 12.G.41.471/1991/21

24 March 1992

Adamfi Video Production GmbH v. Alkotók Stúdiósa Kiszövetkezet

Original in Hungarian

Unpublished

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651
Commented on by Vida in Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1993, 263

The plaintiff, a German company, demanded payment of the price and interest for goods sold and delivered to the defendant, a Hungarian company. At first, the defendant disputed the existence of a contract and the delivery of goods. However, the court found that delivery had taken place on the basis of documents obtained from the Hungarian Customs Authority and the forwarding agent had delivered the goods upon receipt signed by an employee of the defendant.

The court relied upon a sales contract that had previously been concluded between the parties, in order to determine the price of the goods and the other elements of the contract and ordered the defendant to pay (art. 9(1) and 53 CISG).

As to the obligation for payment of interest, which is not regulated by CISG, the court, on the basis of the Hungarian Act on Private International Law (paragraph 25 of Legal Decree No. 13 of 1973), applied German law as the law of the seat of the seller. In this context, on the basis of article 352 paragraph (1) of the German Code of Commerce (HGB), the Court awarded to the plaintiff interest at the rate of 5% on the amount due as of the day the obligation to pay the

purchase price (determined in German currency) became due.

II. ADDITIONAL INFORMATION ON ABSTRACTS PUBLISHED IN
A/CN.9/SER.C/ABSTRACTS/1 and 2

Cases 1, 3, 4, 5, 7 and 21-26

Referred to by Piltz in Neue Juristische Wochenschrift (NJW) 1994, 1101

Cases 1-8 and 23-24

Commented on by Jametti-Greiner in Schweizerische Zeitschrift für internationales und Schweizerisches Recht (SZIER) 5/1993, 653

Cases 2, 5 and 23

Commented on by Magnus in Zeitschrift für Europäisches Privatrecht (ZEuP) 1993, 79

Case 4

Excerpts published in German in Recht der Internationalen Wirtschaft (RIW) 1989, 984

Case 20

Summary published: Yearbook XVIII-1992, International Council for Commercial Arbitration, 11

Cases 21, 23-24, 26

Summary published in Italian: Diritto del commercio internazionale July-September 1993, 651

Case 26

Commented on by Checa Martinez in Jurisprudencia Arbitral , Vol. VIII, 1992, 249

Case 30

Commented on by Chukwumerije in Canadian Business Law Journal, Vol. 22, 1993, 296

Case 40

Reproduced in International Arbitration Report, Vol. 7, 1992, 9